

## United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

TYTON HESTER, #154368

v.

UNITED STATES OF AMERICA, ET AL.

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Civil Action No. 4:20-CV-065

(Judge Schell/Judge Nowak)

### **ORDER OF DISMISSAL**

This case was referred to the United States Magistrate Judge who issued a report and recommendation (Dkt. #54) recommending that *pro se* Plaintiff Tyton Hester's claims be dismissed. Specifically, the Magistrate Judge recommended that Plaintiff's claims against the United States be dismissed without prejudice, and Plaintiff's claims against Assistant United States Attorney Ernest Gonzalez be dismissed with prejudice. The Magistrate Judge further recommended that Plaintiff's "Motion for Leave to Amend Complaint" (Dkt. #37) and "Motion for Default Judgment" (Dkt. #40) be denied, and Plaintiff's "Motion for Disclosure" (Dkt. #41) be denied as moot. Finally, the Magistrate Judge recommended that the Plaintiff be advised that the dismissal of his claims in the instant litigation constitutes a third strike under 28 U.S.C. § 1915(g) and, as a result, the Plaintiff may be denied *in forma pauperis* status and be required to pay the full filing fee when filing additional civil actions or appeals unless he demonstrates that he is in imminent danger of serious physical injury. On April 7, 2021, this case was reassigned to the undersigned (Dkt. #49). Having received the report of the Magistrate Judge, the Plaintiff's Objections (Dkt. #57), and the Defendants' Response (Dkt. #58), the court conducted a *de novo* review of the same and is of the opinion that the Magistrate Judge's report should be adopted.

It is therefore **ORDERED** that *pro se* Plaintiff Tyton Hester's claims against the United States and Assistant United States Attorney Ernest Gonzalez are **DISMISSED** as set forth above.

It is further **ORDERED** that *pro se* Plaintiff Tyton Hester's "Motion for Leave to Amend Complaint" (Dkt. #37) and "Motion for Default Judgment" (Dkt. #40) are each **DENIED**.

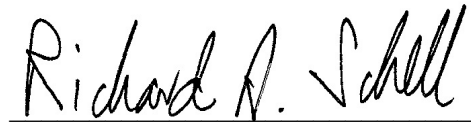
It is further **ORDERED** that *pro se* Plaintiff Tyton Hester's "Motion for Disclosure" (Dkt. #41) is **DENIED AS MOOT**.

It is finally **ORDERED** that *pro se* Plaintiff Tyton Hester's frivolous claims in the instant litigation constitute a third strike under 28 U.S.C. § 1915(g), and the Plaintiff is not allowed to proceed *in forma pauperis* in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury.

All motions by either party not previously ruled on are hereby **DENIED**.

**IT IS SO ORDERED.**

**SIGNED this the 5th day of August, 2021.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE